

Senate Bill 472

Sponsored by Senator BOQUIST (at the request of Ted Campbell) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits caller from purchasing or obtaining for valuable consideration list or compilation of telephone numbers for purpose of making unsolicited call to subscriber and from making, or using automatic dialing and announcing device to make, unsolicited call to subscriber using telephone number that caller obtained from list or compilation of telephone numbers that other person sold or otherwise transferred, for valuable consideration, to caller.

A BILL FOR AN ACT

1 Relating to unsolicited telephone calls; amending ORS 646.608, 646A.370, 646A.372 and 646A.376.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** ORS 646A.370 is amended to read:

4 646A.370. As used in ORS 646A.370 to 646A.374:

5 (1) "Automatic dialing and announcing device" means an automated device that selects and dials
6 telephone numbers and that, working alone or in conjunction with another device, disseminates a
7 prerecorded or synthesized voice message to the telephone number that the device calls.

8 (2) "Call" means an attempt made to contact or a contact made with a subscriber by means of
9 a telephone or telephone line.

10 (3) "Caller" means a person that attempts to contact or that contacts a subscriber by using a
11 telephone or telephone line.

12 (4) "Caller identification service" means a telephone service that permits subscribers to see a
13 caller's telephone number before answering the telephone.

14 (5) "Debt buyer" means a person that engages in the business of purchasing delinquent or
15 charged-off debt for the purpose of collecting the debt.

16 (6) "Established business relationship" means a previous transaction or series of transactions
17 between a caller and a subscriber that occurred within the 18 months preceding a call.

18 (7) "Subscriber" means an individual who has obtained residential or wireless telephone services
19 from a telecommunications provider, or a person who resides with the individual.

20 (8)(a) **"Unsolicited call" means contact with or an attempt to contact, by means of a
21 telephone or telephone line, a subscriber who did not affirmatively invite the contact.**

22 (b) **"Unsolicited call" does not include a call that a caller makes as the result of, or in
23 furtherance of, an established business relationship.**

24 **SECTION 2.** ORS 646A.372 is amended to read:

25 646A.372. (1)(a) A caller may not use an automatic dialing and announcing device in order to
26 call a subscriber unless:

27 (A) The device is designed and operated so as to disconnect within 10 seconds after the sub-
28 scriber terminates the call; and

29 (B) The device provides, and the prerecorded or synthesized voice message that the device plays
30

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 describes, a method by which a subscriber, within the first 10 seconds after a call begins, may enter
 2 a single dual-tone multifrequency signal or otherwise enter or speak a one-digit code to notify the
 3 caller that the subscriber does not want to receive any future calls from the caller.

4 (b) Paragraph (a)(B) of this subsection does not apply to a caller that:

5 (A) Is a collection agency, as defined in ORS 697.005, a debt buyer or a debt collector, as defined
 6 in ORS 646.639;

7 (B) Is a representative of a public safety or law enforcement agency; or

8 (C) Has an established business relationship with the subscriber.

9 (2) A caller may not use an automatic dialing and announcing device to make a call unless the
 10 range of telephone numbers from which the device chooses the number to dial does not include
 11 numbers for:

12 (a) Fire protection, law enforcement or other emergency agencies;

13 (b) Hospital and health care facilities, physician's offices, poison control centers or suicide pre-
 14 vention or domestic violence counseling services; and

15 (c) Subscribers who used the method described in subsection (1)(a)(B) of this section to notify
 16 the caller that the subscribers do not want to receive any future calls from the caller.

17 (3) Subsection (2)(c) of this section does not apply to a caller that:

18 (a) Is a collection agency, as defined in ORS 697.005, a debt buyer or a debt collector, as defined
 19 in ORS 646.639;

20 (b) Is a representative of a public safety or law enforcement agency; or

21 (c) Has an established business relationship with the subscriber.

22 (4)(a) A caller may not use an automatic dialing and announcing device that dials telephone
 23 numbers randomly or sequentially unless the range of telephone numbers from which the device
 24 chooses the number to dial does not include numbers for subscribers who appear on an official list
 25 that a government agency compiled for the purpose of informing potential callers that the sub-
 26 scribers do not want to receive telephone solicitations.

27 (b) Paragraph (a) of this subsection does not apply to a caller that:

28 (A) Has an established business relationship with the subscriber;

29 (B) Is a debt buyer or is subject to regulation under the Fair Debt Collection Practices Act, 15
 30 U.S.C. 1692 et seq.;

31 (C) Is a representative of a public safety or law enforcement agency; or

32 (D) Is a representative of a school district or school if the subscriber is an employee of the
 33 school district, a student or the student's parent, guardian or other family member.

34 (5) A caller that uses an automatic dialing and announcing device may use the device to call a
 35 subscriber only between the hours of 9 a.m. and 9 p.m.

36 **(6) A caller may not:**

37 **(a) Purchase or obtain for valuable consideration a list or compilation of telephone**
 38 **numbers for the purpose of making an unsolicited call to a subscriber; or**

39 **(b) Make, or use an automatic dialing and announcing device to make, an unsolicited call**
 40 **to a subscriber using a telephone number that the caller obtained from a list or compilation**
 41 **of telephone numbers that another person sold or otherwise transferred, for valuable con-**
 42 **sideration, to the caller.**

43 **SECTION 3.** ORS 646A.376 is amended to read:

44 **646A.376. (1) Except as provided in subsection (2) of this section,** violation of ORS 646A.372
 45 or 646A.374 is an unlawful trade practice that is subject to investigation under ORS 646.618 and is

1 subject to enforcement under ORS 646.632. Notwithstanding the provisions of ORS 646.642, a civil
 2 penalty imposed for a violation of ORS 646A.372 or 646A.374 may not exceed \$5,000.

3 **(2) Violation of ORS 646A.372 (6) is an unlawful trade practice under ORS 646.608 that is**
 4 **subject to an action under ORS 646.638.**

5 **SECTION 4.** ORS 646.608 is amended to read:

6 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
 7 vocation or occupation the person does any of the following:

8 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

9 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
 10 proval, or certification of real estate, goods or services.

11 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
 12 ciation with, or certification by, another.

13 (d) Uses deceptive representations or designations of geographic origin in connection with real
 14 estate, goods or services.

15 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
 16 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
 17 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
 18 person does not have.

19 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
 20 teriorated, altered, reconditioned, reclaimed, used or secondhand.

21 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
 22 or that real estate or goods are of a particular style or model, if the real estate, goods or services
 23 are of another.

24 (h) Disparages the real estate, goods, services, property or business of a customer or another
 25 by false or misleading representations of fact.

26 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
 27 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
 28 advertisement discloses a limitation of quantity.

29 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
 30 or amounts of price reductions.

31 (k) Makes false or misleading representations concerning credit availability or the nature of the
 32 transaction or obligation incurred.

33 (L) Makes false or misleading representations relating to commissions or other compensation to
 34 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
 35 stration purposes or in exchange for submitting names of potential customers.

36 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
 37 of the goods or real estate does not authorize the service or dismantling.

38 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
 39 vides the information required under ORS 646.611.

40 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
 41 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 42 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
 43 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 44 discount or other value is contingent upon an event occurring after the time the customer enters
 45 into the transaction.

- 1 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
2 cize a product, business or service.
- 3 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
4 not to deliver the real estate, goods or services as promised.
- 5 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 6 (s) Makes false or misleading representations of fact concerning the offering price of, or the
7 person's cost for real estate, goods or services.
- 8 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
9 known material defect or material nonconformity.
- 10 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 11 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
12 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
13 ation.
- 14 (w) Manufactures mercury fever thermometers.
- 15 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
16 law, or is:
- 17 (A) Prescribed by a person licensed under ORS chapter 677; and
18 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
19 on the proper cleanup of mercury should breakage occur.
- 20 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
21 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
22 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
23 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
24 graph, "thermostat" means a device commonly used to sense and, through electrical communication
25 with heating, cooling or ventilation equipment, control room temperature.
- 26 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
27 mercury light switches.
- 28 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 29 (bb) Violates ORS 646A.070 (1).
- 30 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 31 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 32 (ee) Violates ORS 646.883 or 646.885.
- 33 (ff) Violates ORS 646.569.
- 34 (gg) Violates the provisions of ORS 646A.142.
- 35 (hh) Violates ORS 646A.360.
- 36 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 37 (jj) Violates ORS 646.563.
- 38 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 39 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
40 thereto.
- 41 (mm) Violates ORS 646A.210 or 646A.214.
- 42 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 43 (oo) Violates ORS 646A.095.
- 44 (pp) Violates ORS 822.046.
- 45 (qq) Violates ORS 128.001.

- 1 (rr) Violates ORS 646A.800 (2) to (4).
2 (ss) Violates ORS 646A.090 (2) to (5).
3 (tt) Violates ORS 87.686.
4 (uu) Violates ORS 646A.803.
5 (vv) Violates ORS 646A.362.
6 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
7 (xx) Violates ORS 180.440 (1) or 180.486 (1).
8 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
9 (zz) Violates ORS 87.007 (2) or (3).
10 (aaa) Violates ORS 92.405 (1), (2) or (3).
11 (bbb) Engages in an unlawful practice under ORS 646.648.
12 (ccc) Violates ORS 646A.365.
13 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
14 (eee) Sells a gift card in violation of ORS 646A.276.
15 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
16 (ggg) Violates ORS 646A.430 to 646A.450.
17 (hhh) Violates a provision of ORS 744.318 to 744.384.
18 (iii) Violates a provision of ORS 646A.702 to 646A.720.
19 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
20 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
21 subject of the violation.
22 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
23 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
24 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
25 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
26 (nnn) Violates ORS 646A.082.
27 (ooo) Violates ORS 646.647.
28 (ppp) Violates ORS 646A.115.
29 (qqq) Violates a provision of ORS 646A.405.
30 (rrr) Violates ORS 646A.092.
31 (sss) Violates a provision of ORS 646.644.
32 (ttt) Violates a provision of ORS 646A.295.
33 (uuu) Violates ORS 646A.564.
34 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
35 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
36 do so or unless the person is an active member of the Oregon State Bar.
37 (www) Violates ORS 702.012, 702.029 or 702.054.
38 (xxx) Violates ORS 646A.806.
39 (yyy) Violates ORS 646A.810 (2).
40 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.
41 (aaaa) Violates ORS 443.376.
42 **(bbbb) Violates ORS 646A.372 (6).**
43 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
44 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
45 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-

1 cutting attorney need not prove competition between the parties or actual confusion or misunder-
2 standing.

3 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
4 torney General has first established a rule in accordance with the provisions of ORS chapter 183
5 declaring the conduct to be unfair or deceptive in trade or commerce.

6 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
7 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
8 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
9 fees.

10 **SECTION 5.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, section
11 15, chapter 113, Oregon Laws 2017, section 3, chapter 241, Oregon Laws 2017, section 16, chapter
12 480, Oregon Laws 2017, and section 6, chapter 656, Oregon Laws 2017, is amended to read:

13 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
14 vocation or occupation the person does any of the following:

15 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

16 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
17 proval, or certification of real estate, goods or services.

18 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
19 ciation with, or certification by, another.

20 (d) Uses deceptive representations or designations of geographic origin in connection with real
21 estate, goods or services.

22 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
23 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
24 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
25 person does not have.

26 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
27 teriorated, altered, reconditioned, reclaimed, used or secondhand.

28 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
29 or that real estate or goods are of a particular style or model, if the real estate, goods or services
30 are of another.

31 (h) Disparages the real estate, goods, services, property or business of a customer or another
32 by false or misleading representations of fact.

33 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
34 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
35 advertisement discloses a limitation of quantity.

36 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
37 or amounts of price reductions.

38 (k) Makes false or misleading representations concerning credit availability or the nature of the
39 transaction or obligation incurred.

40 (L) Makes false or misleading representations relating to commissions or other compensation to
41 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
42 stration purposes or in exchange for submitting names of potential customers.

43 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
44 of the goods or real estate does not authorize the service or dismantling.

45 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-

1 vides the information required under ORS 646.611.

2 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
3 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
4 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
5 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
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7 into the transaction.

8 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
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10 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
11 not to deliver the real estate, goods or services as promised.

12 (r) Organizes or induces or attempts to induce membership in a pyramid club.

13 (s) Makes false or misleading representations of fact concerning the offering price of, or the
14 person's cost for real estate, goods or services.

15 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
16 known material defect or material nonconformity.

17 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

18 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
19 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
20 ation.

21 (w) Manufactures mercury fever thermometers.

22 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
23 law, or is:

24 (A) Prescribed by a person licensed under ORS chapter 677; and

25 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
26 on the proper cleanup of mercury should breakage occur.

27 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
28 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
29 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
30 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
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33 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
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36 (bb) Violates ORS 646A.070 (1).

37 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

38 (dd) Violates the provisions of ORS 128.801 to 128.898.

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- 6 (pp) Violates ORS 822.046.
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- 8 (rr) Violates ORS 646A.800 (2) to (4).
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- 10 (tt) Violates ORS 87.686.
- 11 (uu) Violates ORS 646A.803.
- 12 (vv) Violates ORS 646A.362.
- 13 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 14 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 15 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 16 (zz) Violates ORS 87.007 (2) or (3).
- 17 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 18 (bbb) Engages in an unlawful practice under ORS 646.648.
- 19 (ccc) Violates ORS 646A.365.
- 20 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
- 21 (eee) Sells a gift card in violation of ORS 646A.276.
- 22 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 23 (ggg) Violates ORS 646A.430 to 646A.450.
- 24 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 25 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 26 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
27 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
28 subject of the violation.
- 29 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 30 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
31 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 32 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 33 (nnn) Violates ORS 646A.082.
- 34 (ooo) Violates ORS 646.647.
- 35 (ppp) Violates ORS 646A.115.
- 36 (qqq) Violates a provision of ORS 646A.405.
- 37 (rrr) Violates ORS 646A.092.
- 38 (sss) Violates a provision of ORS 646.644.
- 39 (ttt) Violates a provision of ORS 646A.295.
- 40 (uuu) Violates ORS 646A.564.
- 41 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
42 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
43 do so or unless the person is an active member of the Oregon State Bar.
- 44 (www) Violates ORS 702.012, 702.029 or 702.054.
- 45 (xxx) Violates ORS 646A.806.

1 (yyy) Violates ORS 646A.810 (2).

2 (zzz) Violates ORS 443.376.

3 **(aaaa) Violates ORS 646A.372 (6).**

4 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
5 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

6 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
7 cuting attorney need not prove competition between the parties or actual confusion or misunder-
8 standing.

9 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
10 torney General has first established a rule in accordance with the provisions of ORS chapter 183
11 declaring the conduct to be unfair or deceptive in trade or commerce.

12 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
13 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
14 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
15 fees.

16
